

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF COMMERCE

In the Matter of Universal Underwriters
Life Insurance Company

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge George Beck on May 20, 2003, at the Office of Administrative Hearings, 100 Washington Avenue South, in Minneapolis, Minnesota. The Department filed its closing statement on June 4, 2003. The OAH record closed on August 6, 2003 with the filing of a related district court decision.

John A. Knapp, Esq., and Eric Swanson, Esq., of the firm of Winthrop & Weinstine, P.A., 3200 Minnesota World Trade Center, 30 East 7th Street, St. Paul, MN 55101, appeared on behalf of Universal Underwriters Life Insurance Company ("Universal"). Michael Tostengard, Assistant Attorney General, 1200 NCL Tower, 445 Minnesota Street, St. Paul, MN 55101-2130, represented the Minnesota Department of Commerce ("Department").

NOTICE

This Report is a recommendation, not a final decision. The Deputy Commissioner of Commerce will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Deputy Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Deputy Commissioner. Parties should contact Gary A. LaVasseur, Deputy Commissioner, Enforcement Division, Minnesota Department of Commerce, 133 East Seventh Street, St. Paul, MN 55101, telephone (651) 296-3528, to ascertain the procedure for filing exceptions or presenting argument to the Deputy Commissioner.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

STATEMENT OF THE ISSUES

1. Are Universal's credit insurance rates excessive in relation to the benefits provided?
2. Should the Commissioner withdraw approval of Universal's credit insurance forms?

The Administrative Law Judge concludes that the Department has proved that Universal's credit insurance rates are excessive in relation to benefits and recommends that the Commissioner withdraw approval of its credit insurance forms.

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Universal is authorized by the Commissioner to transact credit insurance business in the state of Minnesota.
2. Credit life insurance means insurance on the life of a debtor in connection with a specific loan or other credit transaction.^[1]
3. Credit disability insurance means insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy.^[2]
4. Policy forms and rates for credit insurance are required to be filed with the Department for approval.^[3]
5. The Commissioner must disapprove credit insurance forms and rates if the Commissioner determines that the premiums are excessive in relation to the benefits provided.^[4]
6. Universal has conducted credit insurance business in Minnesota for at least ten years. During this period, the Department has approved Universal's credit insurance forms and rates.^[5]
7. Universal currently has five credit life and disability insurance forms filed and approved for use in the State of Minnesota.
8. Minnesota has prima facie rates for filing and there is a presumption that premiums are not excessive in relation to benefits if they do not exceed the prima facie rate.^[6]
9. Universal's premiums do not exceed Minnesota's prima facie rates.
10. In addition to the prima facie rates, the Commissioner analyzes the reasonableness of credit insurance rates by taking into consideration underwriting expenses, compensation to agents, types of policies issued, and any other relevant

factors and trends.^[7] The Commissioner must also give reasonable consideration to whether an anticipated loss ratio of 50% is developed.^[8]

11. The term “loss ratio” means the percentage of premium collected that is paid out in benefits. A loss ratio of 50 percent means that at least 50 cents in claims is paid out for each dollar of premium taken in.

12. Neither Minnesota Statutes nor Minnesota rules establish a required minimum loss ratio.

13. The loss ratios reported in Universal’s annual financial statements for Minnesota for the year 2000 were 15% for credit disability insurance and 20% for credit life insurance.^[9] This means that for every dollar collected from customers for disability insurance, Universal returned on average 15 cents in payments to the creditor on the loan. For life insurance, on average 20 cents was returned in the form of paying the creditor the balance of the insured loan when the customer became deceased.

14. For its Minnesota credit disability insurance business in the year 2000, Universal paid out approximately 50% in commissions, 15% in claims, 19% in expenses and made 16% in profit. For its credit life insurance in the year 2000, Universal paid out approximately 53% in commissions, 20% in claims, 16% in expenses, and made 11% in profit.^[10]

15. Universal’s Minnesota loss ratio over the five years from 1996 through 2000 has averaged 18% for disability insurance and 20% for life insurance. During that period, Universal’s rates did not exceed Minnesota’s prima facie rates.^[11]

16. From 1997 through 2001, the total credit disability insurance loss ratio for companies doing business in Minnesota has averaged 31%. For the same time period, the total credit life insurance loss ratio for companies doing business in Minnesota has averaged 37%. During this period, the premium rates were essentially at the prima facie level for all companies.^[12]

17. From 1997 through 2001, Universal’s credit disability insurance loss ratio in Minnesota has averaged 16%. For the same period, Universal’s credit life insurance loss ratio has averaged 18%.^[13]

18. The Department has identified approximately 25 other credit insurance companies that have loss ratios below 50% including about 10 whose loss ratios were at or below 20% for the year 2000.^[14]

19. Universal’s historically low loss ratios, which are substantially below the 50% loss ratio factor set out for consideration in Rule 2760.0200 and are almost half the market average, are compelling evidence that Universal’s rates are excessive in the absence of any changes in rates, coverage, or underwriting.^[15]

20. Universal screens its applicants and does not issue credit life insurance to anyone who has “within the last 12 months before the effective date received or been advised to receive medical advice or treatment for cancer or any condition of the heart, arteries, brain, liver, kidneys, lungs, or for stroke, mental disorder, uncontrolled hypertension, nervous system disorder, immune system disorder, alcoholism, drug dependency or diabetes ... or for a disorder of the back, spine or neck.”^[16]

21. Credit insurance products are marketed through various distribution channels, including credit unions, banks, retailers, finance companies and automobile dealers. Universal distributes its credit insurance products through automobile, motorcycle and truck dealerships with automobile dealerships being by far the largest distribution channel.^[17]

22. Unlike insurance agents that are linked with a particular insurance seller, credit insurance vendors (e.g., car dealerships) are free to choose which seller's products will be offered to their customers. If a vendor does not chose a particular credit insurance seller, that seller's credit insurance products will not be sold. As a result, credit insurance sellers compete for vendors' business by offering higher commissions or a better level of service.^[18]

23. The payment of commissions to vendors is a regular practice among sellers of credit insurance products in Minnesota.^[19]

24. There is no provision in law or rule that limits the percentage of premiums that may be paid for credit insurance commissions.

25. Universal pays commissions in amounts that are over fifty percent of the premiums.^[20] In Minnesota for the year 2000, Universal paid out approximately 50% of its total credit disability premiums in commissions and 53% of its total credit life insurance premiums in commissions.^[21]

26. In 2001, credit life insurance companies in Minnesota paid on average 36% of their total premiums in commissions. Other states reported average total credit life insurance commissions for 2001 ranging between 9% and 43% of their premiums.^[22]

27. Three other credit life insurance companies doing business in Minnesota pay commissions comparable to those paid by Universal.^[23] Of the three, one (Resource Life Insurance Company) has agreed to lower its rates.^[24]

28. Julia T. Philips is a Life and Health actuary for the Department of Commerce. In addition to a variety of other responsibilities, Ms. Philips has extensive experience reviewing credit insurance rates for compliance with state statutes and rules. After reviewing Universal's credit insurance forms and rates, and taking into consideration its expenses and commissions paid, Ms. Philips concluded that Universal's rates are excessive in relation to the benefits provided.

29. In conducting her actuarial analysis of Universal's rates, Ms. Philips did not apply a bright line 50% loss ratio standard, but instead gave full consideration to the factors listed in statute and rule. In addition, in reaching her conclusion that Universal's rates are excessive, Ms. Philips employed an "understanding of the well-informed consumer" standard. According to Ms. Philips, the "well-informed consumer" chooses the lowest premium that gives the benefits he or she wants. Because Universal's policies pay out only 18 to 25 cents on the dollar, well below the 50% loss ratio factor contemplated by Minnesota rule 2760.0200, Ms. Philips concluded that a well-informed consumer would find Universal's rates to be excessive in relation to the benefits provided.^[25]

30. Calvin Spence is Universal's Director of Actuarial Pricing and an actuary with 25 years of professional experience. In his opinion, there is no "well informed consumer" standard that is employed by actuaries.^[26]

31. On October 17, 2001, the Department sent a letter to the president of Universal requesting information to assist the Commissioner in determining whether any of the company's policy forms have premiums that are excessive in relation to the benefits provided. The Department noted that its review of the statutory annual statements filed by Universal for 1998, 1999 and 2000 indicated that Universal incurred loss ratios that were significantly lower than 50%. The Department stated that these historically low loss ratios indicate that Universal's rates "appear to have been excessive." The Department further requested that Universal provide revised rates if it anticipated loss ratios lower than 50%.^[27]

32. In addition to the letter sent to Universal, the Department requested information from 25 other companies whose credit insurance policies had very low loss ratios. In response to these letters, approximately seven credit insurance companies have agreed to reduce their rates.^[28]

33. On December 17, 2001, the Department received Universal's response. Universal submitted summary data requested and stated that any reduction in rates, "especially of the magnitude that would be called for using a pure loss ratio approach, should not be made at this time."^[29]

34. Based on the information Universal provided, the Department concluded that Universal's rates for credit life and credit disability insurance are excessive in relation to the benefits provided in violation of Minn. Stat. § 62B.07, subd. 2.

35. The Department also concluded that Universal's payment of commissions at levels exceeding 50% of the premium is unreasonably high.

36. On May 10, 2002, the Department filed a Notice of Intent to Withdraw Approval and Order for Hearing. The notice informed Universal that a hearing would be held to determine whether the Commissioner should withdraw approval of Universal's credit insurance and disability forms.

37. During the pendency of this proceeding the Consumer Credit Insurance Association, of which Universal is a member, filed suit in Ramsey County District Court seeking an injunction prohibiting contested case proceedings such as this one and compelling the Commissioner to adopt any change in Department policy through rulemaking, rather than on a case-by-case basis. The district court denied the request for an injunction in an order dated August 1, 2003.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce are authorized to consider this matter pursuant to Minn. Stat. §§ 62B.07, subd. 3, 62B.13 and 14.50 (2002).

2. Universal received due, proper and timely notice of issues in this proceeding and the time and place of hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant substantive and procedural legal requirements.

4. Pursuant to Minn. Stat. § 62B.07, subd. 2, the Commissioner shall within 60 days after the filing of policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements and riders, disapprove any such form if the premium rates charged or to be charged are excessive in relation to benefits.

5. Minnesota law does not define “excessive”, but it does require the Commissioner to give full consideration to underwriting expenses.

6. In order to determine whether the premium to be charged under a particular policy form submitted by an insurer is excessive in relation to benefits, the Commissioner must give full consideration to and make reasonable allowances for underwriting expenses including, but not limited to, claim adjustment expenses, general administrative expenses including costs for handling return premiums, compensation to agents, expense allowances to creditors, if any, branch and field expenses and other acquisition costs, the types of policies actually issued and authorized as defined in section 62B.03, clauses (1) through (6), and any other factors and trends demonstrated to be relevant.^[30]

7. In determining whether a premium is excessive in relation to benefits, the Commissioner must give reasonable consideration as to whether an anticipated loss ratio of “claims incurred” to “premiums earned” of 50 percent is developed.^[31]

8. It shall be presumed that the premiums are not excessive in relation to the benefits if the premiums or premium rates as filed with the Commissioner do not exceed the prima facie rate or actuarially equivalent rates.^[32]

9. Universal’s premiums do not exceed the prima facie rates and are therefore presumed to be reasonable.

10. The Department has the burden of showing by a preponderance of the evidence that Universal’s credit insurance rates are excessive in relation to the benefits provided.^[33] In so doing, the Department has the burden of overcoming the presumption in favor of Universal that its rates are not excessive as they do not exceed the prima facie rates.

11. Universal’s historically low loss ratios, which are substantially below the 50% loss ratio factor set out for consideration in rule and are almost half the market average, are compelling evidence that Universal’s rates are excessive in the absence of any changes in rates, coverage, or underwriting.

12. The Department has overcome the presumption that Universal’s rates are reasonable and has demonstrated by a preponderance of the evidence that Universal’s rates are excessive in relation to the benefits provided in violation of Minn. Stat. § 62B.07, subd. 2.

13. The Department properly withdrew its approval of Universal's credit insurance forms.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of the Minnesota Department of Commerce withdraw approval of Universal's credit insurance forms.

Dated this 13th day of August 2003.

S/ George A. Beck

GEORGE A. BECK
Administrative Law Judge

Reported: Transcribed.

NOTICE

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The Department initiated this contested case proceeding to withdraw approval of Universal's credit life and credit disability insurance forms alleging that its credit insurance rates are excessive in relation to benefits. Because Universal's rates do not exceed Minnesota's prima facie rates, they are presumed to be not excessive in relation to the benefits provided. The Department has the burden of proving that Universal's rates are excessive and of overcoming the presumption in Universal's favor. The Department maintains that it has presented sufficient evidence to overcome the presumption and to establish that Universal's rates are excessive.

The Department contends that Universal's extremely low Minnesota loss ratios, averaging 18% for credit disability insurance and 20% for credit life insurance for the period 1996-2000, are compelling evidence that Universal's rates are excessive. The evidence is compelling, according to the Department, because of the consistency of the historical loss ratios (over the past five years), and the fact that they are far below a 50% loss ratio in all years for both credit life and disability coverage. In addition to being substantially below the 50% loss ratio, Universal's credit insurance rates are also well below the market average. The Department maintains that the reason for Universal's low loss ratios is the high commissions Universal pays its vendors. The Department asserts that because Universal pays out over 50% of its premiums in commissions, it is forced to limit the benefits it pays out in order to make a profit.

According to the Department's actuary, Julia Philips, a well-informed consumer would not want to purchase Universal's product if he or she knew that only 20 cents on the premium dollar was being paid back in claims.

Universal argues that the Department has failed to prove that its rates are excessive in relation to benefits. Universal points out that its rates are within the prima facie rates set out in rule and are therefore presumptively not excessive in relation to benefits.^[34] Moreover, Universal contends that the Department offers only conclusory assertions that its rates are excessive because its loss ratio is "too low" and the commissions it pays are "too high". Because nowhere in rule or law is there a minimum loss ratio requirement or a limit on the amount of commissions a company may pay its vendors, Universal maintains that the Department has failed to meet its burden of proof for withdrawal of Universal's credit life and credit disability forms. In addition, Universal argues that by concluding that its loss ratio is too low and its commissions are too high, the Department is attempting to apply unadopted standards to its review of insurance rates that do not exist in law or rule.^[35]

Universal is understandably concerned that the policy being advanced in this case is also applied to its competitors, so that it will not be disadvantaged in the marketplace. As it suggests, rulemaking in this area would ensure that the law is applied uniformly. However, the legislature has not required rulemaking in this area and yet has directed the Department to disapprove rates that are excessive in relation to benefits. The district court did not get to the merits of the claim before it, but expressed doubt that the Department was engaged in rulemaking rather than authorized enforcement in this contested case proceeding. Although rulemaking might well be a reasonable course of action, the Minnesota appellate courts have allowed agencies the choice of whether to proceed by rulemaking or on a case-by-case basis.^[36] The record does suggest that the Department is proceeding against Universal's competitors, also.

Minn. Stat. § 62B.07, subd. 2 provides, in part, that:

The commissioner shall ...disapprove any form if the premium rates charged or to be charged are excessive in relation to benefits [.] In order to determine whether the premium to be charged under a particular policy form submitted by an insurer is excessive in relation to benefits...the commissioner shall give full consideration to and make reasonable allowances for underwriting expenses including, but not limited to, claim adjustment expenses, general administrative expenses including costs for handling return premiums, compensation to agents, expense allowances to creditors, if any, branch and field expenses and other acquisition costs, ... and any and all other factors and trends demonstrated to be relevant.^[37]

The Department gave full consideration and made reasonable allowances for Universal's underwriting expenses and the types of policies actually issued, and other relevant factors and trends. The Department is not denying, for example, that a reasonable commission is a necessary expense in the sale of credit insurance. But the statute does not require the Department to make allowance for an unreasonable expense.

The rule adopted by the Commissioner pursuant to this statute provides in part that:

... it is hereby determined that in considering the elements set forth in Minn. Stat. § 62B.07, subd. 2, the Commissioner shall give reasonable consideration as to whether an anticipated loss ratio of “claims incurred,” to “premiums earned” of 50% is developed.^[38]

The issue before the Administrative Law Judge is whether Universal’s rates are excessive *in relation to* the benefits it provides. Standing on their own, the rates are not excessive because they do not exceed Minnesota’s prima facie rates. While this creates a presumption that Universal’s rates are reasonable, the analysis does not end there. Instead, the Commissioner is required to consider several factors and to analyze the rates in relation to the benefits provided. Relevant to this consideration is the fact that some other states have loss ratio standards that are higher than 50% and still have active markets for credit insurance.^[39]

The Department presented actuarial evidence establishing that while Universal’s premiums do not exceed Minnesota’s prima facie rates, the benefits it has provided over the last five years have been substantially below the 50% loss ratio that the Commissioner is required to consider and well below the market average. In fact, between 1997 and 2001, Universal’s loss ratio for credit disability insurance averaged 16% while total credit disability insurance loss ratios in Minnesota for the same period averaged 31%. Likewise, Universal’s loss ratio for credit life insurance during 1997 through 2001 averaged 18% while total credit life insurance loss ratios in Minnesota for the same period averaged 37%.

It is true that Minnesota does not set out a bright line 50% loss ratio test. If Universal’s loss ratios approached 50%, it might be difficult for the Department to argue that the rates were excessive. But when the loss ratios are 16-18%, a finding that the rates were not excessive in relation to benefits would require the Commissioner to ignore Minn. Rule 2760.0200. Giving the rule meaning at least requires a close examination of Universal’s loss ratios. The large disparity between Universal’s Minnesota loss ratios and the 50% loss ratio that the Commissioner is required to consider, along with a consideration of the experience of other credit insurance companies in Minnesota and elsewhere, as well as the opinion testimony of the Department’s actuary, establishes the excessiveness of Universal’s rates in relation to the benefits returned to consumers.

G.A.B.

^[1] Minn. Stat. § 62B.02, subd. 2.

^[2] Minn. Stat. § 62B.02, subd. 3.

^[3] Minn. Stat. § 62B.07, subd. 1.

^[4] Minn. Stat. § 62B.07, subd. 2.

^[5] Ex. 2. Prefiled Testimony of Spence at 2.

^[6] Minn. Rule 2760.0300, subp. 1.

^[7] Minn. Stat. § 62B.07, subd. 2.

^[8] Minn. Rule 2760.0200.

- [\[9\]](#) Ex. 2, attachment A.
- [\[10\]](#) Ex. A, attachment 3.
- [\[11\]](#) Ex. A at 6-7, table 4 and attachment 3.
- [\[12\]](#) Ex A at 5-6, table 3.
- [\[13\]](#) Ex. A at 6-7, table 4.
- [\[14\]](#) Ex. 1; Testimony of Philips at 23.
- [\[15\]](#) Ex. A at 7.
- [\[16\]](#) Ex. A at 8, attachment 3.
- [\[17\]](#) Ex. 3 at 1-2, Prefiled Testimony of McMillin; Ex. A, attachment 3.
- [\[18\]](#) Ex. 3 at 2, Prefiled Testimony of McMillin.
- [\[19\]](#) Ex. 3 at 2, Prefiled Testimony of McMillin.
- [\[20\]](#) Ex. A at 6-7, attachment 3.
- [\[21\]](#) Ex. A at 6-7, attachment 3.
- [\[22\]](#) Ex. 3 at 6-7, attachments A and B.
- [\[23\]](#) Ex. 3, attachment C.
- [\[24\]](#) Testimony of Philips at 21-22.
- [\[25\]](#) Ex. A at 2; Testimony of Philips.
- [\[26\]](#) Ex. 2.
- [\[27\]](#) Lindell Affidavit Ex. B (summary disposition motion).
- [\[28\]](#) Exs. 1 and 2; Testimony of Philips at 23.
- [\[29\]](#) Ex. 2, attachment B.
- [\[30\]](#) Minn. Stat. § 62B.07, subd. 2.
- [\[31\]](#) Minn. Rule 2760.0200.
- [\[32\]](#) Minn. Rule 2760.0300, subp. 1.
- [\[33\]](#) Minn. Rule 1400.7300, subp. 5; Minn. Stat. § 62B.07, subd. 2.
- [\[34\]](#) Minn. Rule pt. 2760.0300, subp. 1.
- [\[35\]](#) This argument was considered in the Order Denying Summary Disposition.
- [\[36\]](#) *Bunge Corp. v. Commissioner of Revenue*, 305 N.W.2d 779 (Minn. 1981); *L & D Trucking v. MDOT*, 600 N.W.2d 734 (Minn. Ct. App. 1999) rev. denied (Minn. October. 12, 1999); *Pietsch v. Minn. Bd. of Chiropractic Examiners*, 662 N.W.2d 917 (Minn. Ct. App. 2003).
- [\[37\]](#) Minn. Stat. § 62B.07, subd. 2.
- [\[38\]](#) Minn. Rule pt. 2760.0200.
- [\[39\]](#) Ex. A at 3-5, tables 1 and 2; Philips testimony at 15.